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AGGRESSIVE FOREST RESERVATION.

BY JAMES P. KIMBALL.

INCIDENTALLY to the remarkable progress of the cult for the protection of forests, which, as said by Mr. Henry Gannett, has come to be "almost a religion," there has strongly developed at Washington a cult which has for its object progressive sequestration from the public domain of expansive areas, sometimes in units of thousands of square miles, as forest reserves, by the sole authority of the President, under the acts of March 3rd, 1891, and June 4th, 1897. Forest reservation under these acts presents two sides, an obverse and reverse. Only the side represented by the statutes is at all recognized in the East. Apart from their delegation of power to the President, these are vague, specious, general, and mainly declaratory of intent and purpose. The opposite side, represented by administrative rule, from which qualification of law has been omitted, is the side manifested to the West. It is the object of the present writing to indicate briefly the difference between the two sides of forest reservation; the one, altruistic in theory, the other aggressive in practice.

However well-meaning or influential may be most of those who adhere to the principle of forest protection, there are few who are able or sufficiently interested to keep constantly informed of the acts of forest reserve aggrandizement, whether proposed or effected. While the cult holds undisputed sway at Washington, all the material interests affected are local to the Western States, and the alarm which is felt in these States at the enormous occlusion of forest reserves within the public domain finds popular expression nowhere near the seat of the individual power by which these reserves are created. That is feelingly voiced only in the localities affected by them, by a majority or minority of the residents as the case may be—that is, by the persons immediately con-

cerned. The sense of injury felt by such persons often transcends the complacency of those who, in the successful pursuit of the cult, take no thought of local interests which must suffer from the inordinate application of its principles, though exploiting to the utmost all local interests of a different character.

Upon the proclamation of a forest reserve, which cancels all rights of further entry thereupon under the general land laws, land-holders and mine-owners who reside in the reserved region suddenly find themselves in a new and unexpected environment. They are bound hand and foot to strange general rules and special orders, under formal authority of the Secretary of the Interior, but administered primarily by bureau and division officers of the Department of the Interior, through local supervisory officers of several grades, some of whom may be non-resident. No longer a free agent, as an American citizen should be, the settler is called upon to submit his avocation and daily acts to the control of personal authority, exercised without form or force of law. To stand up against this, implies conflict with United States authority, which, though unsupported by specific laws, is not wanting in means for annoyance, sometimes equally effective as an instrument for coercion. In a contest with authority, the settler's only recourse is to a United States District Court, and in most of the Western States such recourse can be had only at a single point, often remote from the settler's residence.

While the dweller within a forest reserve is not absolved from his duties as a citizen of the State in which the reserve is situated, he practically ceases to enjoy benefit from public or county improvements. In the ratio of the depopulation of reserves which, sooner or later, generally follows their creation, county taxes are necessarily increased.

For all vested rights which have been acquired by the settler under the general land laws, payment has been fully made, including the cumulative price of his labor. Security in the enjoyment of these rights is among the prerogatives of the American citizen. Yet, when his property comes to be encompassed by a forest reserve, all that is conceded to him under forest reserve rule is permissive privileges at the will of a Department at Washington. According to the text of the statute, "Settlers are *permitted* to utilize their property under such rules and regulations as may be prescribed by the Secretary of the Interior."

True, the settler may surrender possession, including all increment of value in buildings, irrigation, fences, or other improvements, in exchange for "lieu selections" of unimproved vacant lands in still unreserved parts of the public domain, wherein desirable selections have come to be few and far between. Whatever the increment, the rate of value per acre of lieu selections can rarely exceed the current negotiable value of Land Office scrip. Accretion to local possessions is no longer practicable. One of the greatest incentives to exertion is, therefore, hopelessly removed. Thousands of worthy settlers within the borders of territory summarily set aside for forest reserves at a stroke of the pen, have elected to abandon an environment which has suddenly become intolerable, and to surrender homes, however well established or even cherished they may have become.

Grazing of sheep is prohibited in most of the reserves. For want of upland pasturage and water for their flocks in dry seasons, resident and near-by wool-growers are suddenly confronted with complete subversion of their occupation. Grazing rights that are preserved to other stockmen are restricted within designated limits for a given number of live stock, which must be counted in and out of reserves on given dates. Timber may be cut for construction or for fuel only by measure, also within prescribed limits. Notwithstanding the precedence over forestry purposes clearly given by the statute to his industry, the mine-owner is cut off from necessary uses for timber, except in small doles, adequate only to purposes of the prospector. Further supplies are far from being assured, even after much circumlocution and suspense in the process of application for them. Timber privileges, which are granted within limits to individuals without cost, are explicitly denied to corporations, legally paradoxical as this may be. In the Cascade Forest Reserve of Oregon, where timber is redundant, important mines and mills have been closed down during the past winter for want of fuel for steam, on the dictum that timber cut on one mineral location cannot be used on another of a group of locations under one and the same ownership. Strict compliance, clinched by signed promises to comply, with all rules and regulations, is made a condition to the granting of a privilege under any one of them.

As a mode of coercion practised by local forest reserve officials where United States courts have not been found on the side of

Department exactions, probably none has proved more effective than successful intimidation of the employed when the attempt at intimidation has been unsuccessful with the employer. Woodcutters or herders, threatened with arrest (their principals, perhaps, having vainly sought arrest in order to initiate legal tests), are not unlikely to take alarm, even in the absence of power to make arrests, and desert their jobs.

The initiatory act in the creation of forest reserves and of additions thereto rests with the President. All further initiative falls to the Secretary of the Interior. For withdrawals by the President, as provided by the statute, are only on recommendation by the Secretary of the Interior. Appeals to the President, through the Department of the Interior, for withdrawals, reach the President only in case of affirmative action. Direct appeals to the President are accordingly referred—presumably unread—to the Department. Negative action on the part of the Department is practically final.

What, presumptively, are the influences brought to bear upon the Executive, tending to the creation of forest reserves? In view of their enormous encroachment upon the resources of at least eleven Western States during the last decade, that is a pertinent question. Before suggesting an answer, it will be proper to note that existing reserves differ widely among themselves, from the luxuriant and redundant forests of the humid belt, as in Washington and Oregon, to the scant and scattered growths of the arid belts on the lower slopes of the Rocky Mountains. Most of them are essentially mountain areas, including culminations of ranges often far above the timber-line.

It will also be well to note the recent advancement of the cult of forest protection as perhaps most strikingly shown by the notable increase of schools of forestry, professorships of forestry in colleges and universities throughout the United States, and also by the number of periodicals devoted to forestry. In a more special way, the growth of the forest reserve cult, tending to aggrandizement of forest reserves, is evidenced by the number of divisions of the administrative departments of the Federal government devoted either to forest protection or to forest reserves. The most active division of the kind is within the organization of the United States Geological Survey, whose three quarto annual volumes, already issued, attest the scientific importance given to

forest reserves by the Interior Department. Another forestry division of the same Department is that of the General Land Office. A third forestry division is within the organization of the Department of Agriculture. The functions of this division are non-administrative, but like most of the divisions in that Department advisory and for the spread of special knowledge. Each division named is at present in charge of a specialist of well-known attainments. All division chiefs act in harmony, at least to the end of forest reserve aggrandizement.

Returning to the question above proposed, it may be remarked that, as the forest reserve is commonly assumed to oppose at present the one more or less effective measure against grazing of sheep on the open ranges, growers of cattle, when at a comfortable distance from reserves, themselves enjoying immunity from grazing prohibitions, as well as benefits from prohibitions against a collateral industry, are found almost to a man on the side of forest reservation. Behind its propagandism thus stands an alert and influential solidarity, which, while seeking its own ends alone, gives local support to efforts primarily extraneous centering first and last at Washington.

Expressions in favor of forest reserve extension may, from some special personal motive, occasionally be heard from resident flock-masters, especially from such as have been crowded by nomadic flocks or by other unscrupulous herding. Even from mines outside the borders of reserves may come appeals for protection from "timber sharks," such as forest reserves unquestionably can give. Such a precedent is apt to be cited by zealous officials in proof of the general acceptability of forest reserves as a public boon, and in refutation of special pleas for withdrawals.

Changes in boundaries of forest reserves from time to time have generally resulted in net increase. No withdrawals have been reported, except to enable a certain county of Washington to resume business, two-thirds of whose area had been turned into a reserve. Withdrawals have been vainly sought by many, under terms of the statute, for the sake of release from the dictation and domination of forest reserve officials, in favor of territory immediately or closely within reservation boundaries and shown to be more valuable for agricultural or mining purposes than for forestry uses. But few if any applications of the kind have ever passed the Department of the Interior.

The area of forest reserves, thirty-five in number, on March the 1st, 1900, as officially stated, was 71,697 square miles, distributed in eleven States west of the 103rd meridian. With the additions of 1902 by President Roosevelt in Wyoming and Montana, the area foots up at present to over 80,000 square miles, an area equal to the combined areas of the New England States together with the area of Maryland.

With the forest reserves of 1891 and 1897, 3,332 square miles in area, the additions of 1902 by President Roosevelt enclose the Yellowstone National Park on all but the western side, constituting an expanse of over 9,000 square miles in Wyoming and some 2,200 in Montana. On the 29th of January, 1903, the President, not yet satisfied with his startling additions of nearly 8,000 square miles to the Yellowstone reserves, was further induced to sign a third proclamation, within eight months, merging the Teton, Absaroka and Yellowstone forest reserves with additional territory of several hundred square miles yet uncomputed, all to be known as the Yellowstone Forest Reserve.

This united area comprises several divisions of the Rocky Mountains, culminating in fields of perpetual snow and glaciers, unfailing sources of powerful streams, which furnish copious irrigation to the Big Horn and Yellowstone basins. From their first settlement these basins, including large expanses of bad lands, fit for nothing else, have been given over to stock-growing, and, incidentally, to wool-growing, the two branches of industry, as divided between cattle and sheep with the wool clip, being of about equal relative importance. Distribution of forests, or rather of more or less timbered areas over such an expanse, is of course most unequal. The resources of both basins in no small part have come from the privilege of grazing stock over vacant surfaces of the public domain, including upland plateaus and untimbered bottoms, in periods of drought. Under forest reserve dispensation, it is now undertaken to curtail this privilege for cattle and horses, and to withdraw it wholly from sheep.

Under the general land laws, it is true, land-holders acquire no extra lateral rights as against the United States. But what are the equities from environment in favor of the settler in the arid belts, where agriculture as an end rather than as a means offers but a precarious and inadequate substitute for stock-raising? To this industry, along with the mining industry, both

so vital to the existing prosperity of the United States, the eastern arid belt owes its wonderful social and material development. While accretions and combinations of capital have resulted in a few acquisitions of areas sufficient to support large herds and flocks within legal fences, the sum of prosperity in stock raising, the initial industry to so many other industries, is to the credit of comparatively small land-holders, who have won titles to home ranches, but whose main dependence is upon surrounding open ranges which otherwise would go to waste, and of which the major part is unfit for improvement or other occupation or uses. Under other conditions, the Great American Desert could never have been reclaimed or mapped into proud commonwealths, the homes of a people second to none in public spirit, thrift and intelligence. No homesteader or settler upon a desert claim can do more by irrigation than provide for winter forage and garden supplies. Access to the open ranges has hitherto proved the great and practically the only incentive to settlement of the great West, and must be recognized as still the basis of its prosperity, in relation to which mining developments, extensive as they are, are clearly of subsidiary importance. Ranges at elevations too high for entry or improvement, but perennially renewed under unfailing precipitation, are not the least part of the vanishing resources still remaining to the stock-grower. Upwards of a thousand square miles of grazing upland, destitute of forest in any measured sense of the term, and mostly above the timber-line, and partly on the outer border, like the Bear-tooth Plateau, have been taken into new reserves now united. Parts of this contiguous territory have been the last resort of stock in times of drought, such as has prevailed during the last few seasons. Neither water supply nor reforestation here comes into question, nor are forestry purposes of importance subserved, except in control of grazing limits and in policing against fires. Whether game protection may be fostered to a small or large degree by thus surrounding the National Park with a rugged margin of over eleven thousand square miles, culminating in an inaccessible mountain barrier, it should be remembered that game protection is no administrative concern of the federal government, beyond the preservation of certain wild animals in the National Park to which the federal government has acquired title by purchase. Even within the National Park, so effectively policed by the United States army, infractions of

game laws are punishable only by the State. That protection of game, however, with other purposes more remote from forestry purposes, has been of moment in considerations at Washington, leading to recent proclamations of reserves, is well known.

That the federal government is actually preparing for the enterprise of game protection on its own account is shown by Senate bill number 6689, favorably reported February 28th, 1903, by the House Committee on Public Lands, authorizing the President to designate areas in the public forest reserves to be set aside for this specific purpose. Views of the minority of the Committee, as expressed by Mr. Mondell, take strong grounds against the measure, than which, says the member from Wyoming, "it would be difficult to conceive of a measure which more contemptuously ignores and insolently disregards the rights and wishes of the people of the States in which the preserves provided for are to be located."

On the same date a favorable report on Senate bill number 7123 was also authorized by the same Committee, giving persons employed on forest reserves, as well as in national parks, power beyond that of United States marshals to make arrests without warrant.

While undoubtedly providing additional means for annoyance and intimidation, such arbitrary power, if ever conferred, can scarcely be legally employed, except at the instance of the Department of Justice in process of criminal prosecution of the kind which several United States courts have refused, on constitutional grounds, to sustain.

In an interview upon the present subject recently given out by the late Governor Richards of Wyoming, it is remarked that:

"The policy now being pursued by President Roosevelt is causing the withdrawal from entry of much of our best lands. It is restricting possibilities of immigration and, if continued, will keep Wyoming and other States similarly situated in the class of arid States. We wish to depart from the class and make Wyoming one of the foremost in agriculture through the operation of the irrigation laws, as it is possible to do. We want to raise agricultural products, not wolves, bear and other game for the purpose of making Wyoming a game preserve for Eastern sportsmen."

Against the same policy and the recent additions to the forest reserves in the State of Wyoming, the present Governor, soon

after assuming office, addressed a formal protest to the Secretary of the Interior in similar spirit.

The plenary power delegated to the President by the act of March 3rd, 1891, for the creation of forest reserves, was restricted by the act of June 4th, 1897, to the "purpose or intent" of provisions for improving and protecting the forest within a reservation, "or for the purpose of securing favorable conditions of water-flows," or for furnishing "a continuous supply of timber for the use and necessities of citizens of the United States," from which purpose or intent was disavowed "inclusion therein of lands more valuable for the mineral therein or for agricultural purposes than for forestry purposes."

Notwithstanding the restrictions like the above, the power of the President has been successfully invoked for vast extensions of forest reserves, already expansive enough for all prescribed forestry purposes. By repeated exercise of this power, supplemented by Departmental authority, domination of the cattle interest over the wool-growing interest was practically secured in a wide section, with the open design, on the part of those most active in invoking such power, of summarily, not impartially, deciding, as far as could be decided, the irrepressible conflict between the two interests. Not only was the enormous reduction of grazing limits in Montana and Wyoming urged upon the President by cattle-growers as a measure for banishment of sheep, but two cattle-growers were appointed to supervise the new reserves.

To what length conflict over distinctive uses of the public ranges may be carried, is witnessed by such lawless deeds as one reported from Thermopolis as late as February 3rd last, when a prominent flock-master was fatally shot through the lungs by a band of masked cattle-men, his camp burned, and two hundred of his flock clubbed to death, the rest being stampeded.

That prohibition of sheep-grazing in the Yellowstone Forest Reserve, imposed on non-residents and immediate and near-by residents alike, was not without excess of zeal in behalf of local cattle-growers, now appears from the fact that, at a mass meeting at Cody on January 31st last, the federal government was petitioned, without dissent, by over a hundred merchants and representative stock-growers, mostly cattle-men, of Big Horn county, to rescind prohibition orders so as to exclude from grazing privileges none but nomadic flocks. It is scarcely to be supposed that

this convention was attended by the masked riders who in another part of the county, three days later, expressed in their own way their view of the equities of the conflict.

By an almost unanimous vote, the National Live Stock Association, in convention at Kansas City, adopted resolutions on January 16th last requesting Congress to authorize the President to appoint a commission to determine the respective rights of resident cattle-men and sheep-men on the public ranges, and to devise the best means to settle amicably the range war. Resolutions were also adopted asking for rescindment of the exclusion order, the transfer of administration of forest reserves to the Department of Agriculture, and protesting against the setting aside of vast tracts for game preserves in the name of forest reserves.

In the year 1901, permits were issued for grazing 1,180,318 sheep in eight of the forest reserves, or 84 per cent. of the limited number. The number grazing without permits is not reported. To settlers living within and immediately adjacent to thirty-three reserves, permits were issued for grazing 277,048 cattle and horses, each horse counting as two head of cattle, or 64 per cent. of the limited number.

So far at least under previous administrations appears to have been borne out the statement of a chief of one of the forestry divisions of the Interior Department, that "the main purpose of the reserves is not exclusion, as is still so often claimed," but that "they merely provide the means and men to give the much-needed care and protection which private enterprise at present could not afford, and probably would be unwilling to furnish for a long time to come." To such profession, *prima facie,* there can be no demur.

That fires are purposely set to the woods by herders of sheep, as is so often charged, is denied by the same authority, who says:

"To charge the sheep-men with the many burns seems hardly fair, since ungrazed portions of a reserve are not without as many burns as the regular ranges. While carelessness in the management of campfires, etc., is possible with sheep-herders, as with other persons, it must be granted that their experience, together with their material interests, would naturally check and correct such deficiencies. In addition, it seems proper to state that the experience with fires in the Big Horn Reserve during the summer of 1900 clearly proves that, with a cordial co-operation of sheep-men and rangers, the former furnish a very desirable body to draw from in case of emergencies. Where it requires

from two to four days to fetch men from beyond the limits of the reserve, such assistance from sheep-men may be of the greatest importance. In denying the charges of firing the woods, the sheep-men correctly point out that the closely-fed park lands are less liable to be fired, and that in many cases fires have actually come to an end when reaching closely cropped sheep ranges."

The timbered area of Wyoming is officially estimated at 12,500 square miles, or thirteen per cent. of the area of the State; yet over eleven per cent. of the area of the State is occupied by forest reserves, and over three per cent. by the Yellowstone National Park. Hence it appears that of unwooded area in national reservations, there is included two per cent. of the State area, plus the percentage of the wooded area of the State still left outside of reservations.

As publicly stated by the supervisor of the Yellowstone Forest Reserve, one mountain trail in Wyoming (Boulder Basin) has recently been destroyed by dynamite, in order to facilitate control and surveillance over the passes within the united reserves. That the same will probably be done to the Deer Creek Trail was also announced. Guaranteed as the public is by statute in the right of entering upon forest reservations "for all proper and lawful purposes, including that of prospecting, locating and developing the mineral resources thereof," such indignities upon the public are to be condemned and resented.

The rules and regulations governing forest reserves can not here be discussed. As conceded by the Attorney-General, with reference to them, "Congress can not delegate its legislative power so as to authorize an administrative officer, by the adoption of regulations, to create an offence and prescribe its punishment."

In cases involving criminal prosecution for violation of grazing prohibitions and of timber-cutting restrictions, and of prohibitions not imposed by the general land laws, a demurrer to the criminal information filed by defendants has commonly been sustained in the United States courts, where the plea of "guilty" was not entered—at least in California, Montana, Utah and Washington. How far such an adverse record on constitutional grounds may serve to restrain the Departments concerned from criminal prosecutions under the statutes remains yet to be seen. That prosecutions have ceased in States where judicial decisions have reversed the claims of the Departments is well known.

From a recent decision in the United States Circuit Court of Appeals, in California, successful restraint of sheep-grazing seems to open up a prospect of governing forest-reserves by injunction.

Where exactions of forest reserve rule on matters of importance become intolerable, test cases in the United States courts offer the most promising relief, especially in view of numerous decisions against them. But even such recourse fails where the government of forest reserves or the Department of Justice refuses to join issue by process of law.

To citizens persisting in the enjoyment of rights long exercised under the general land laws, but denied within forest reserves by discretionary rules, both administered by the General Land Office, or else granted at the cost of much circumlocution, suspense and delay, no little trouble and annoyance, in localities remote from United States courts, may be caused by United States district attorneys who are not unable to employ official process to that purpose with or without support of law, though scarcely without instigation by superior authority at Washington.

For this reason, if for no other less personal motive, most persons having relations with forest reserves are naturally anxious for further specific legislation supplementary to the statute. For it is a general belief on the Pacific coast, as in the Rocky Mountain region, that the declaratory clause of the statute, without which it could scarcely have been enacted, is rendered nugatory by Departmental practice. This may be affirmed from common experience in both regions of the country where agricultural and mining interests, to which the declaration gives precedence over forestry purposes, have been subordinated by administrative officers to forestry purposes, and so continue to be, in spite of appeals through the Department of the Interior for remedial measures at the hands of the President, as provided by the statute.

That opinions and recommendations are apt to be conceived and prepared in a technical spirit conformably to the more scientific purposes and doctrinal theories of forest reservation, is not improbably in accord with the zeal expected from all bureau officers. Of such spirit no criticism is here intended, however difficult it may be for extraneous and material interests to stand up outside the pale of authority against it.

No preventive mechanism of law has yet been devised to deal with abuse of the wild ranges of the West. From reasonable use

they suffer notably less than from disuse. Even from bunched or herded stock no serious abuse would follow, if resident growers were alone the occupants. No one is so conscious as themselves of the improvidence of close cropping, especially of arid, champaign and bad-land areas, which are the first to suffer from incursions of nomadic stock, often from beyond State borders. Upland ranges bearing only coarse grasses, low in forage value, are no more the choice of one class of growers than another, though all classes sometimes are compelled to make the best of them, when suffering from drought or from unscrupulous herding over better parts of the public ranges.

Desirable as it is to discover a legal preventive for abuse of the public ranges, if practicable under State laws, let it be sought by direct means in specific legislation, not by indirect or disingenuous methods, exploited from the license and crudities of undeveloped statutes like those thus far designed for the government of Forest Reserves. In common with other citizens of the United States, dwellers within forest reserves and upon their borders demand government not by men but by laws, and also, as far as may be, by home rule.

To the accepted theories of forest protection and the avowed purposes of forest reservation, no popular objection is seriously opposed.

Until reserve laws be wrought into specific provisions, it is urged that unforested grazing territory on the outer margins of reserves, as well as certain mining territory, be restored to the unreserved public domain. For such restoration existing statutes amply provide. Restoration of interior tracts is commonly regarded as out of the question.

The general public of the Western States, as voiced by the press, further asks that protection of game shall not weigh at Washington in the creation of forest reserves, but be left practically, as it is formally, to the States; also, that no forest reserves be created or maintained, except within the limitations of the declaration of the statute, and with due regard to all as well as single local industrial interests of importance, impartially and relatively considered.

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